No. 99-1185

JUL 10 2000

In The

Supreme Court of the United States

MARK SELING, Superintendent,
Special Commitment Center,

Petitioner,

v.

ANDRE BRIGHAM YOUNG,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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QUESTIONS PRESENTED

1. Whether a state civil commitment law directed at sexual predators whose actual implementation has been pervasively punitive throughout its nine year history violates double jeopardy, *ex post facto*, and due process protections where the statute's punitive "purpose or effect" is demonstrated by the "clearest proof".

2. Whether a federal court exercising habeas corpus jurisdiction is precluded from considering institutional conditions of confinement in determining whether a commitment regime labeled "civil" by the state legislature is instead punitive in "purpose or effect" under the Due Process, *Ex Post Facto* or Double Jeopardy clauses of the Constitution.

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BRIEF FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

INTEREST OF *AMICUS CURIAE*

The National Association of Criminal Defense Lawyers is a District of Columbia non-profit corporation with a membership of more than 10,000 attorneys nationwide – along with 80 state and local affiliate organizations numbering 28,000 members in all fifty states. The American Bar Association recognizes NACDL as an affiliate organization and awards it full representation in its House of Delegates. NACDL was founded in 1958 to promote study and research in the field of criminal law and procedure, to disseminate and advance knowledge in the area of criminal justice and practice, and to encourage the integrity, independence and expertise of defense lawyers in criminal cases in the state and federal courts. Foremost among NACDL's objectives is to promote the proper administration of justice. It has appeared before this Court as *amicus curiae* on numerous occasions. *See, e.g., Jones v. United States,* 526 U.S. 227 (1999); *Richardson v. United States,* 526 U.S. 813 (1999).[1]

STATEMENT OF THE CASE

This case involves the constitutionality of Washington State's Sexually Violent Predator statute as it applies to Respondent Andre Young. Young has been indefinitely

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[1] All parties have consented to the appearance of NACDL as *amicus curiae* in this matter and letters of consent have been lodged with the Clerk. No counsel for any party has authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, has made a monetary contribution to the preparation or submission of this brief. Sup. Ct. Rule 37.6.

confined under the statute since the expiration of his criminal sentence in 1990. While the present case was pending in the lower courts, this Court decided *Kansas v. Hendricks*, 521 U.S. 346 (1997). By a 5-4 vote, the *Hendricks* majority rejected a facial challenge to a Kansas statute modeled on Washington's, finding that the involuntary commitment of sexually violent predators, even where postponed until the expiration of their criminal sentences, did not violate the substantive due process, *ex post facto* or double jeopardy clauses of the Constitution.

Notably, the *Hendricks* Court determined that by committing sex offenders "to an institution expressly designed to provide psychiatric care and treatment," the state "has doubtless satisfied its obligation to provide available treatment" (521 U.S. at 368 n.4) – a determination with which the dissenters took specific issue. *Id.* at 381-86, 390 (Breyer, J., joined by Stevens, Souter & Ginsburg, JJ., dissenting).

Notwithstanding *Hendricks*' rejection of facial challenges to sexual predator statutes, the Court of Appeals in this case held that the detailed factual allegations presented by Respondent, particularizing the specifics of his and other inmates' punitive, nontherapeutic confinement, nevertheless presented a colorable constitutional challenge to the Washington statute as it applied to him. *Young v. Weston*, 192 F.3d 870, 875 (9th Cir. 1999). In doing so, the Court of Appeals properly took note of this Court's earlier admonition in the analogous case of *Allen v. Illinois*, 478 U.S. 364, 373 (1986)("Had petitioner shown, for example, that the confinement ... imposes ... a regimen which is essentially identical to that imposed upon felons with no need for psychiatric care, this might well be a different case").

In point of fact, the punitive, nontherapeutic conditions of confinement at the Special Commitment Center

(SCC), located on the grounds of the state prison at McNeil Island, has been the subject of extensive federal civil rights litigation since 1991. *See Turay v. Seling*, No. C 91-664 WD (W.D.Wash. filed May 5, 2000)(Findings of Fact, Conclusions of Law, And Order Granting Sanctions In Part)(lodged with the Clerk of this Court); *see also id.*. (W.D.Wash. filed November 15, 1999)(Findings of Fact, Conclusions of Law and Contempt Order)(annexed to Cert. Opp. App. B in this Court).

In its most recent set of rulings, dated May 5, 2000, the federal district court (William L. Dwyer, J.) found as follows (*id.* at 5):

> The central issue in the present [consolidated] cases is whether the defendants are providing constitutionally adequate mental health treatment to the plaintiff SCC residents as required by due process and the Supreme Court decisions cited above. The finding that SCC has failed to provide such treatment in the past has been made not just by the jury and the district judge in the present cases, but also by the State of Washington's Inspection of Care (IOC) Report issued in October 1999, by the Superior Court for the State of Washington for King County, by the special master herein, by other experts including one called by defendants at an earlier hearing, and even by the SCC's recently-departed clinical director and current superintendent.

Under the totality of circumstances, then, and given the record developed in the *Turay* litigation, it may hardly be said that the Court of Appeals' remand for an evidentiary hearing in this case lacked a substantial basis in fact.

SUMMARY OF ARGUMENT

Habeas corpus is the appropriate remedy by which to attack punitive conditions of post-imprisonment confinement of a sexual predator where the constitutional bases of attack are the due process, double jeopardy and *ex post facto* clauses of the Constitution and the relief sought is release from custody. This Court has recognized that habeas corpus is a concurrent federal remedy by which a state prisoner may contest the conditions of his confinement and seek his release.

Habeas corpus is also an equitable remedy with broad power to adopt such procedures, including discovery and evidentiary hearings, and provide such relief, including release from custody, "as law and justice require".

Habeas corpus is the federal remedy that provides the broadest flexibility in administration and in the fashioning of relief, given recently-enacted Congressionally-imposed limitations placed on the federal courts in the conduct of §1983 state prison conditions litigation under the Prison Litigation Reform Act of 1995. The PLRA leaves habeas corpus litigation virtually untouched nor are the limitations introduced by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) relevant here.

ARGUMENT

HABEAS CORPUS IS THE APPROPRIATE REMEDY TO ATTACK THE PUNITIVE CONDITIONS OF CONFINEMENT OF A SEXUAL PREDATOR AS VIOLATIVE OF THE DOUBLE JEOPARDY, *EX POST FACTO* AND DUE PROCESS CLAUSES OF THE CONSTITUTION

Andre Young was committed directly upon the completion of his penal sentence in 1990 to Washington's Special Commitment Center, a facility run by the State's Department of Social Services and located in one of the State's maximum security prisons, after having been found a "sexually violent predator" under the applicable Washington statute. RCW ch. 71.09.

The Washington state courts refused Respondent's repeated proffers of evidence demonstrating the punitive, nontherapeutic conditions at SCC, finding only that the commitment procedures passed constitutional muster even after he had already fully served his criminal sentence. *In re Young*, 122 Wash.2d 1, 857 P.2d 989 (1993). (Only recently, the Washington Supreme Court has twice reiterated its disinclination to entertain claims concerning punitive confinement at SCC. *See In re Detention of Campbell*, 139 Wash.2d 341, 347-50, 986 P.2d 771, 774-76 (1999); *In re Detention of Turay*, 139 Wash.2d 379, 415-22, 986 P.2d 790, 809-13 (1999); *although compare Campbell, id. at* 362-72, 781-86 (Sanders, J., dissenting); *Turay, id. at* 436-40, 820-22 (Sanders, J., dissenting)).

Nevertheless, the Court of Appeals for the Ninth Circuit ruled that Respondent was entitled to an evidentiary hearing to sustain his detailed claims that the Washington commitment scheme and its actual implementation at SCC was punitive in its effect. Should he sustain his burden by

"the clearest proof", the court ruled that his commitment should be set aside as violations of the double jeopardy and *ex post facto* clauses of the Constitution. *Young v. Weston*, 192 F.3d 870, 873-76 (9th Cir. 1999). Significantly, the court of appeals so ruled in the exercise of its habeas corpus jurisdiction.

Habeas Corpus Is A Concurrent Federal Remedy By Which To Address Punitive Conditions Of Confinement

In clarifying the relation between an action for habeas corpus (28 U.S.C. §2254) and a civil rights action (42 U.S.C. §1983) as vehicles for state prisoners to challenge their confinement on constitutional grounds, this Court has set forth certain bright line rules. In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Court held that prisoners challenging the fact or duration of their physical confinement, seeking immediate or speedier release from imprisonment, must pursue habeas corpus as their principal federal remedy. Where grievances relate to the conditions of confinement, as opposed to release, the federal remedy ordinarily is a civil rights action. *Id.*. at 499-500 & nn.14 & 15. *See also Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991)(Posner, C.J.).

Nevertheless, this Court has noted that habeas corpus is a "concurrent federal remed[y] in prison condition cases" along with §1983. *Preiser*, 411 U.S. at 499-500 (citing *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971); *Johnson v. Avery*, 393 U.S. 483 (1969)). *See also Humphrey v. Cady*, 405 U.S. 504, 514 (1972)(petitioner entitled to challenge via habeas corpus his "substantial constitutional claims" concerning the place and character of his confinement in a prison unit labeled "Sex Deviate Facility"); *Albers v. Ralston*, 665 F.2d 812, 815-16 (8th Cir. 1981)(prisoners may challenge conditions of confinement via habeas corpus); *Willis v. Ciccone*, 506 F.2d 1011, 1014-19 (8th Cir. 1974).

Among the lower courts, it is well settled that habeas corpus challenges the place as well as the fact of confinement, even if the challenged place is a particular hospital ward. *See, e.g., Covington v. Harris*, 419 F.2d 617, 620-21 (D.C. Cir. 1969)(citing *In re Bonner*, 151 U.S. 242 (1894)); *Schuster v. Herold*, 410 F.2d 1071 (2d Cir. 1969); *Dixon v. Jacobs*, 427 F.2d 589, 597-98 & n.26 (D.C. Cir. 1970). *See also Stultz v. Cameron*, 383 F.2d 519, 520-21 (D.C. Cir. 1967); *Lake v. Cameron*, 364 F.2d 657 (D.C. 1966); *Miller v. Overholser*, 206 F.2d 415, 419 (D.C. Cir. 1953).

In *Covington v. Harris*, the D.C. Circuit deemed habeas corpus the appropriate remedy where petitioner alleged that his confinement in the maximum security wing of a psychiatric facility violated his liberty interest under the due process clause (419 F.2d at 623-24):

> It makes little sense to guard zealously against the possibility of unwarranted deprivations prior to hospitalization, only to abandon the watch once the patient disappears behind hospital doors. The range of possible dispositions of a mentally ill person within a hospital, from maximum security to outpatient status, is almost as wide as that of dispositions without. The commitment statute no more authorizes unnecessary restrictions within the former range than it does within the latter. * * * [A]dditional restrictions beyond those necessarily entailed by hospitalization are as much in need of justification as any other deprivations of liberty; nor does it preclude all judicial review of internal decisions.[2]

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[2] The *Covington* court took note of the punitive nature of petitioner's maximum security confinement (*id.* at 622-23):

Nor does the mere denomination of the confinement as "civil" or "regulatory" change its essentially punitive character. As this Court noted in *Powell v. Texas*, 392 U.S. 514, 529 (1968):

> One virtue of the criminal process is, at least, that the duration of penal incarceration has some outside statutory limit; * * * "Therapeutic civil commitment" lacks this feature; one is typically committed until one is "cured". Thus, [those committed] might [be] subject[ed] to the risk that they may be locked up for an indefinite period of time under the same conditions as before, with no more hope than before of receiving effective treatment and no prospect of periodic "freedom".

Thus, in terms which appear prescient with regard to the case at bar, the *Powell* Court concluded, "we run the grave risk that nothing will be accomplished beyond the hanging of a new sign -- reading "hospital" -- over one wing of the jailhouse" (*id.* at 529).

This Court has repeatedly recognized that the special confinement of those involved in the criminal process deemed mentally ill raise unique constitutional issues warranting heightened scrutiny given the special liberty interests involved. *See, e.g., Jackson v. Indiana*, 406 U.S. 715, 738 (1972)("Due process requires that the nature and duration of the commitment bear some reasonable relation to the purpose for which the individual is committed"). This

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[The] John Howard [Pavilion] houses principally the so-called "criminally insane". Such facilities have, in the past, notoriously rivalled maximum security prisons in the pervasiveness of their restraint upon liberty and the totality of their impositions upon dignity. * * * [C]onfinement in John Howard is not normally contemplated for civilly committed patients and entails extraordinary deprivations of liberty and dignity which make it, in effect, more penitentiary than mental hospital, even if it also provides some treatment.

heightened concern was underscored in *Vitek v. Jones*, 445 U.S. 480 (1980), where the Court rejected the state's argument that transfer from prison to mental hospital was a purely administrative matter (*id.* at 493):

> None of our decisions holds that conviction for a crime entitles a State not only to confine the convicted person but also to determine that he has a mental illness and to subject him involuntarily to institutional care in a mental hospital. Such consequences visited on the prisoner are qualitatively different from the punishment characteristically suffered by a person convicted of crime. Our cases recognize as much and reflect an understanding that involuntary commitment to a mental hospital is not within the range of conditions of confinement to which a prison sentence subjects an individual (collecting cases).

Here, of course, Respondent is subject to continued confinement in a purported psychiatric facility beyond the expiration of his criminal sentence. *Compare Baxstrom v. Herold*, 383 U.S. 107, 113 (1966). And the linchpin of his claim is that the Washington commitment statute, and its actual implementation at SCC, as applied to him, is punitive and thereby subject to the due process, *ex post facto* and double jeopardy clauses of the Constitution. *Young*, 192 F.3d at 873. The relief he seeks is release from confinement. Habeas corpus, accordingly, is the appropriate vehicle by which to secure the remedy sought.

Habeas Corpus Is An Equitable Remedy With Broad Power To Adopt Such Procedures And Provide Such Relief "As Law And Justice Require"

Both statutes and decisions of this Court have deemed habeas corpus to be "governed by equitable principles" authorizing the federal courts to "dispose of [habeas petitions] ... as law and justice require". 28 U.S.C. §2243. *See also Schlup v. Delo*, 513 U.S. 298, 319 (1995)("Court has adhered to the principle that habeas corpus is, at its core, an equitable remedy"); *Withrow v. Williams*, 507 U.S. 680, 686-87 (1993), *see also id.* at 699-700 (O'Conner, J., concurring in part and dissenting in part)("[c]oncerns for equity ... resonate throughout our habeas jurisprudence"); *McCleskey v. Zant*, 499 U.S. 467, 502 (1991); *Dugger v. Adams*, 489 U.S. 401, 410 (1989).

Indeed, this Court has described habeas corpus as governed less by "statutory developments" than by "a complex and evolving body of equitable principles informed and controlled by historical usage ... and judicial decisions". *McCleskey*, 499 U.S. at 489; *see also Schlup*, 513 U.S. at 319 n.35 ("This Court has repeatedly noted the interplay between statutory language and judicially managed equitable considerations in the development of habeas corpus jurisprudence (collecting quotations and citations)"); *Brecht v. Abrahamson*, 507 U.S. 619, 631-33 (1993)(Court has, where necessary, "filled the gaps of the habeas corpus statute").

To that end, "[t]he very nature of the writ demands that it be administered with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected" (*Harris v. Nelson*, 394 U.S. 286, 291 (1969)), and that preclusive doctrines and formalities "yield to the imperative of correcting ... fundamentally unjust incarceration". *Engle v. Isaac*, 456

U.S. 107, 135 (1982). *See also Harris*, 394 U.S. at 291 (habeas corpus review affords federal courts the "ability to cut through barriers of form and procedural rules").

Even when procedures are contemplated that are novel or out of the ordinary (e.g., discovery), the federal courts, by statutory authorization and rules, have the power to "dispose of the matter as law and justice require". 28 U.S.C. §2243. *See also Hilton v. Braunskill*, 481 U.S. 770, 775 (1987)("Even in 1894 ... the Court interpreted the predecessor of §2243 as vesting federal courts 'with the largest power to control and direct the form of judgment to be entered in cases brought before it on *habeas corpus*'" [citing *In Re Bonner*, 151 U.S. 242, 261-62 (1894)]).[3]

Only recently, this Court had occasion to underscore that both the procedures by which habeas petitions were to be litigated, as well as the relief ultimately fashioned, must be of sufficient flexibility that the relevant facts are adequately developed in adjudicating the merits of the claim. In *Bracy v. Gramley*, 520 U.S. 899 (1997), the Court unanimously remanded for a full evidentiary hearing where it was confronted with colorably meritorious claims of judicial corruption in connection with a state murder conviction (*id.* at 908-09):

> We conclude that petitioner has shown "good cause" for discovery under [Habeas] Rule 6(a). In *Harris [v. Nelson, supra]*, we stated that "[w]here specific allegations before the court show reason to believe

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[3] The "law and justice" language dates back to the 1867 Habeas Corpus Act, Act of Feb. 5, 1867, ch. 28, §1, 14 Stat. 385-86, which was understood to confer judicial authority "of the most comprehensive character ... [that is] impossible to widen ..." *Ex Parte McArdle*, 73 U.S. 318, 325-26 (1867).

Parenthetically, it should be noted that §2243 and its "law and justice" language remain unamended by the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).

> that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry" 394 U.S. at 300. ... Habeas Corpus Rule 6 is meant to be "consistent" with *Harris*.

Clearly, this case provides a paradigmatic example of the need for flexibility in the adjudication of Respondent's colorably meritorious claims. He has been incarcerated in SCC for nine years under conditions which a federal judge and jury, as well as a special master, have already (and repeatedly) found to be grossly inadequate to provide the necessary therapeutic treatment for which he was ostensibly "civilly" committed. The federal §1983 *Turay* litigation has been ongoing since 1991, and the federal district judge has been compelled to enter repeated contempt orders and sanctions on a multiplicity of occasions. The Washington Supreme Court has refused repeatedly to order the State to ameliorate the treatment conditions at SCC as recently as 1999, leaving Respondent and other SCC residents to their remedies in federal court. *See Campbell*, 986 P.2d at 775-76; *Turay*, 986 P.2d at 802-04, 809-13.

Given the lengthy development of the factual record that has already taken place in the federal *Turay* litigation, the Court of Appeals' remand for an evidentiary hearing in this case (192 F.3d at 873-76) will hardly impose an unmanageable burden either on the State or Respondent. More to the point, and as discussed *infra*, the federal judge exercising habeas jurisdiction over this case may have far broader remedial and equitable powers at his disposal than does the judge hearing the §1983 action. Quite simply, the habeas judge possesses the remedial authority to impose a variety of equitable remedies, including Respondent's release from custody. *See, e.g., Levine v. Torvik*, 986 F.2d 1506, 1520 (6th Cir. 1993)(civilly committed mental patient

ordered released subject to conditions imposed by federal court with respect to outpatient therapy); *Phifer v. Warden*, 53 F.3d 859, 864-65 (7th Cir. 1995)("Conditional orders are essentially accomodations to the state. They represent a district court's holding that constitutional infirmity justifies petitioner's release. The conditional nature of the order provides the state with a window of time within which it might cure the constitutional error. Failure to cure that error, however, justifies the district court's release of the petitioner.").[4]

Habeas Corpus Is The Only Federal Remedy That Affords Complete Relief, Given Limitations Recently Imposed In §1983 Prisoner Proceedings

The State argues that habeas corpus is an inappropriate remedy in this context, suggesting that Respondent be limited to a civil rights action under 42 U.S.C. §1983. Pet. Br. 31-33; *Amici* States Br. 13-16. This is disingenuous in the extreme, particularly in light of Congressional and judicial actions which only recently have placed substantial restrictions on the remedial powers of the federal courts with regard to state prisoner litigation. *See, e.g.*, the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66 to 1321-77 (1995). *See also Miller v. French*, 2000 WL 775572 (U.S. June 19, 2000); *Heck v. Humphrey*, 512 U.S. 477 (1994).

On their face, the federal habeas corpus and civil rights statutes authorize overlapping procedural vehicles by which prisoners may interpose constitutional challenges to state action resulting in conviction, commitment, sentence or other official confinement. However, in *Heck v. Humphrey*,

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[4] *See also* Note, *The Nascent Right To Treatment*, 53 Va. L. Rev. 1134, 1157-59 (1967)(habeas corpus appropriate remedy to address failure to provide adequate psychiatric care, citing, *inter alia*, *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966) and *Lake v. Cameron*, 364 F.2d 657 (D.C. Cir. 1966)).

the Court narrowed §1983 actions by making habeas corpus the "exclusive federal remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of 1983". 512 U.S. at 481.

Heck has thus substantially expanded the range of claims that, although potentially covered by both remedies, are understood by the Court to be cognizable only in habeas corpus. Under *Heck*, then, habeas corpus becomes the exclusive remedy for all prisoner claims – including claims seeking damages and injunctive relief -- that "call into question the lawfulness of conviction or sentence." *Id.* at 482-83. In effect, *Heck* extends the *Preiser* rule by making those prisoner claims otherwise subject to overlapping jurisdiction now cognizable only in habeas corpus.

Here, Respondent seeks release from custody because of the punitive nature of his confinement in a state psychiatric facility located on the grounds of a state prison. This continued punitive confinement after the expiration of his criminal sentence raises serious double jeopardy and *ex post facto* concerns, particularly in light of the State's intransigence, after nine years of civil litigation, to provide a properly "therapeutic" milieu for the residents involuntarily incarcerated there. *Cf. Baxstrom v. Herold*, 383 U.S. 107 (1966). Release from further confinement clearly is at the core of the relief he seeks, even where the challenge is framed as an attack on the punitive conditions of his confinement. *Covington v. Harris*, 419 F.2d at 622 & n.11.

Moreover, accepting the State's invitation to eliminate habeas corpus as a viable federal remedy in this case would run the serious risk of divesting the federal courts of substantial equitable authority in the conduct of state prisoner litigation and the fashioning of appropriate relief. Only last Term, in *Miller v. French*, *supra*, this Court upheld Congressionally-imposed limitations prohibiting the

federal courts from exercising their equitable authority to suspend operation of the automatic stay provisions of the PLRA. The PLRA sets forth standards for the entry and termination of prospective relief in civil actions challenging conditions at state prison facilities. Among the Act's provisions are those providing for the "immediate termination" of prospective relief that in the opinion of either party is not "narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. §3626(b). Indeed, in April 1998, all pre-PLRA prison decrees became subject to periodic motions for termination. *See* Brief for the United States at 3, *Miller v. French, 2000 WL 775572 (U.S. 2000)* (Nos. 99-224 and 99-582).

More to the point, under the PLRA's provisions, the mere filing of a stay application by a State defendant triggers an automatic stay provision that federal district judges are powerless either to extend or enjoin. As noted by Justice O'Connor, writing for the majority, "curbing the equitable discretion of district courts was one of PLRA's principal objectives". *Miller, supra*, at *8 & *14.

The long range impact of the PLRA on federal litigation of state prison conditions cases, of course, remains to be seen. Two preliminary observations, however, are properly in order. First, the PLRA provides State defendants with a ready-made procedural vehicle by which to further limit and delay the expeditious imposition of federal remedies at state prison institutions. (In this case, for example, the *Turay* federal litigation, the State's continued recalcitrance, as manifested by repeated contempt citations and the imposition of sanctions -- and Respondent's "therapeutic" incarceration -- all have been going on unabated since 1991.)

Second, and more important, the PLRA will have no appreciable impact on the federal courts' exercise of their habeas jurisdiction or their equitable authority thereunder.

Indeed, the analogous mandatory time limitations imposed on federal habeas courts by AEDPA (28 U.S.C. §2266(b) & (c)) have no application in noncapital habeas cases such as the proceedings at bar. *See Lindh v. Murphy*, 521 U.S. 320, 326-30 (1997)(comparing time-limitation provisions of Ch. 154 (capital habeas cases) with the absence of such limitations in Ch. 153 (noncapital habeas cases)).

Accordingly, federal habeas corpus has emerged from both the PLRA and AEDPA with its equitable discretion relatively intact. The statutory (and equitable) limitations that Congress has now imposed on the federal district courts in state prisoner §1983 litigation will not impair habeas courts' ability to properly fashion swift and efficacious remedies where warranted -- "as law and justice require". 28 U.S.C. §2243.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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